

1 be made in the written testimony. Do you -- if you want to
2 cross-examine on it, have at it on cross-examination, because
3 it's, it's both voir dire and cross-examination material. Of
4 course, as you did -- noted, it, it does change the meaning of
5 the sentence.

6 Anything more, Ms. Schmeltzer?

7 MS. SCHMELTZER: No. I would ask that the exhibit
8 be received in evidence and I have an original and one copy
9 for the court reporter.

10 JUDGE STEINBERG: Has, has the change been made on
11 the original and the copy?

12 MS. SCHMELTZER: Yes.

13 JUDGE STEINBERG: Any objection?

14 MR. HONIG: Judge, we've just had a guest join us.
15 Could I ask that, that we welcome our guest and ask --

16 JUDGE STEINBERG: Okay. I didn't -- are you with
17 the FCC?

18 OBSERVER #4: Yes. I'm the former attorney with
19 the Mass Media Division.

20 JUDGE STEINBERG: Okay. Welcome.

21 OBSERVER #4: Thank you.

22 JUDGE STEINBERG: We'll see how long you last.

23 Most people get bored by now. I guess you -- I said nothing
24 else -- okay.

25 MR. HONIG: I have a number of objections.

1 JUDGE STEINBERG: Let me, let me just ask, is this
2 the only voir dire you have on this, on this exhibit? Do you
3 have any voir dire?

4 MR. HONIG: Yes.

5 JUDGE STEINBERG: Okay. Why don't you complete
6 your voir dire and then you can move to your objections.

7 VOIR DIRE EXAMINATION

8 BY MR. HONIG:

9 Q Mr. Lauher, is it correct that on May 23, 1989, you
10 had a meeting with Michael Blanton, my law clerk?

11 MS. SCHMELTZER: May 23, 1989?

12 BY MR. HONIG:

13 Q 19-- I'm sorry, 1994. I'm, I'm old. I'm five
14 years in the past. May 23, 1994.

15 A That I had a meeting with --

16 Q Mr. Michael Blanton.

17 A Yes. Yes.

18 Q And you were aware that Mr. Blanton was my law
19 clerk, isn't that right?

20 A Yes.

21 Q When was the first occasion that you spoke with Mr.
22 Blanton before that meeting?

23 A He called me at home one evening approximately five
24 to seven days before that date. So, that was the first
25 contact.

1 Q What did he tell you?

2 MS. SCHMELTZER: Your Honor, it doesn't seem to me
3 that this is appropriate for voir dire.

4 MR. ZAUNER: I agree, Your Honor.

5 JUDGE STEINBERG: Sustained. Voir dire is how this
6 exhibit came into being, not what happened after it came into
7 being. So, if you have any questions going to how this exhib-
8 it came into being, and, and this exhibit was signed the 21st
9 of May 1994 and you're on the 23rd of May --

10 MR. HONIG: Let, let me understand then --

11 JUDGE STEINBERG: Okay.

12 MR. HONIG: -- Your Honor, and -- I, I would make
13 two, two points. I had understood that I would be able to
14 conduct voir dire on the other matter that was discussed
15 before we began. But in any case, this is an evolving
16 Declaration which has just undergone a change. So --

17 JUDGE STEINBERG: You could ask about --

18 MR. HONIG: -- it's a work in process.

19 JUDGE STEINBERG: -- you could ask about the
20 change. So, why don't -- let's -- do you have any questions
21 as to how this document came into being?

22 MR. HONIG: A couple. They're, they're not the
23 bulk of what I wanted to ask, but I can ask them.

24 Did someone from the Church call you and ask you to
25 be their witness in this case or did you call them?

1 MS. SCHMELTZER: Your Honor, that's not voir dire
2 either.

3 JUDGE STEINBERG: It, it, it relates to how this
4 Declaration came into being. Overruled.

5 WITNESS: I believe the first contact was actually
6 a representative of the law firm for the Church.

7 BY MR. HONIG:

8 Q Who was that?

9 A Who was who?

10 Q Who, who was that representative?

11 A It was -- I forget who originally contacted me. It
12 was either Barry or Kathryn.

13 JUDGE STEINBERG: Barry Gottfried or Kathy
14 Schmeltzer?

15 WITNESS: Yes.

16 BY MR. HONIG:

17 Q Do you recall when that was? To refresh your
18 memory, this case was designated for trial February 1, 1994.
19 You signed your Declaration May 21, 1994. Does that help?

20 A Well, it was sometime between those two dates.

21 Q Was it -- how long -- well, how much time passed
22 between that initial contact and May 21st when you signed your
23 Declaration?

24 A Several weeks at the most, I would say.

25 Q Now, had you had a pre-existing business relation-

1 ship in any way with the church? Let -- strike that.

2 What, what is your line of business presently?

3 A What is my line of business?

4 MS. SCHMELTZER: Your Honor?

5 MR. HONIG: How are you employed?

6 MS. SCHMELTZER: This isn't voir dire.

7 JUDGE STEINBERG: I'll, I'll allow him some leeway.

8 He's obviously working up to something.

9 WITNESS: Now?

10 BY MR. HONIG:

11 Q Yes.

12 A I'm an independent consultant and I operate a radio

13 station in Edwardsville, Illinois.

14 Q I'm sorry, sir. I, I can't hear you.

15 A I'm an independent consultant and I operate a radio

16 station in Edwardsville, Illinois.

17 Q What's that station?

18 A WRYT Radio.

19 Q WRYT Radio? Does the signal cover St. Louis?

20 A Parts of it, yes.

21 Q Okay. What's its format?

22 A Talk.

23 Q And -- what's your title with the station?

24 A I have no real title.

25 Q Are you the general -- in effect, the general

1 manager?
2 A In effect.
3 JUDGE STEINBERG: Do you own the station?
4 WITNESS: Yes.
5 MR. HONIG: Pardon?
6 JUDGE STEINBERG: He owns the station.
7 MR. HONIG: Okay.
8 JUDGE STEINBERG: So, he can, he can call himself
9 whatever he wants.
10 MR. HONIG: Okay.
11 BY MR. HONIG:
12 Q Does your station do any business of any kind with
13 the Church or with KFUD?
14 A No.
15 Q Now, you -- when, when did you cease to be a KFUD
16 employee?
17 A Sometime in July of '89.
18 Q And why did you -- how did you come to no longer be
19 an employee of KFUD?
20 MS. SCHMELTZER: Again, Your Honor, I think
21 we're --
22 JUDGE STEINBERG: This is crossing into cross
23 rather than voir dire. It's a fine line. And if you want to
24 say I'm finished with voir dire, let me do my cross, that's
25 okay.

1 MS. SCHMELTZER: Well, I guess we haven't received
2 this exhibit yet.

3 JUDGE STEINBERG: We can do that later. Or --

4 MR. HONIG: No. I, I don't want to do cross. I'm
5 asking this only for the purpose of establishing some facts
6 which, which go to the credibility of this Declaration.

7 JUDGE STEINBERG: Well, the credibility of the
8 Declaration goes to cross, how it came into being -- well.

9 MR. HONIG: Well, let -- in that case, hold on just
10 a minute.

11 JUDGE STEINBERG: Why don't you do your objections
12 and we'll --

13 MR. HONIG: Okay.

14 JUDGE STEINBERG: Why don't you take your objec-
15 tions and then we'll --

16 MR. HONIG: Before I do, Your Honor, let me be sure
17 I understand this. Most of the questions I have for voir
18 dire, in fact, deal with what happened after the Declaration
19 was signed. Will I be able to ask those questions?

20 JUDGE STEINBERG: That's not voir dire. Anybody
21 have a, have a Blackswell Dict-- you're a paralegal?

22 PARALEGAL: Yes, sir.

23 JUDGE STEINBERG: You don't have a Blackswell
24 Dictionary with you, do you?

25 PARALEGAL: I don't.

1 JUDGE STEINBERG: Okay. I just -- I'm just -- let
2 the record reflect I'm addressing -- any other -- okay.

3 MR. HONIG: All right.

4 JUDGE STEINBERG: But --

5 MR. HONIG: I can ask it on cross then?

6 JUDGE STEINBERG: Yeah. Well, you can ask the
7 question. If we get an objection I'll rule.

8 MR. HONIG: Well.

9 JUDGE STEINBERG: You did have specific objections?

10 MR. HONIG: Yeah. Let me turn to those.

11 JUDGE STEINBERG: Yeah, let's turn to those. I
12 think it might be more fruitful to do that.

13 MR. HONIG: Let -- would you like me to state my
14 objections to particular lines first or the objection that I
15 have to the entire Declaration?

16 JUDGE STEINBERG: It's up to you.

17 MR. HONIG: Let me start with the entire
18 Declaration. Your Honor, my, my -- I would first object to
19 the receipt of the entire Declaration on the basis that cross-
20 examination on much of the subject matter of this Declaration
21 with the exception of this change which occurred this morning
22 -- I think maybe one other line -- is impossible.

23 JUDGE STEINBERG: Okay. That's for the reasons you
24 stated earlier?

25 MR. HONIG: That's right.

1 JUDGE STEINBERG: Okay. That is overruled.

2 MR. HONIG: And without prejudice to seeking leave
3 to appeal that ruling overruling that objection --

4 JUDGE STEINBERG: Well --

5 MR. HONIG: -- I would like to state --

6 JUDGE STEINBERG: You're not going to --

7 MR. HONIG: -- specific --

8 JUDGE STEINBERG: You're, you're not -- I'm not
9 going to give you permission to appeal evidentiary rulings.
10 You can just add this to your list of egregious mistakes that
11 I've made. And when you appeal to the Review Board or the
12 Commission, if you appeal -- you might not appeal. You might
13 love my ID and say I'm not going to appeal. But you may not
14 love my ID and you might decide you want to appeal. So, just
15 add this to the lists of mistakes that you've considered that
16 I've made. Everybody keeps a list. And -- except me, because
17 everything I do --

18 (Laughter.)

19 JUDGE STEINBERG: Although I have corrected some
20 mistakes.

21 MR. HONIG: No one could ever say you're not very
22 secure. Let me turn then --

23 JUDGE STEINBERG: I just put up a good front.
24 Okay.

25 MR. HONIG: Let me turn to particular lines.

1 First, in paragraph -- well, in, in paragraph 1, the witness
2 -- the last sentence. The witness states, "I had an extensive
3 background in broadcasting and advertising as well as a strong
4 interest in classical music."

5 I would object to -- I don't -- I think the first
6 clause is, is harmless, but I think that the second clause
7 which goes to the witness's knowledge and, and ultimately goes
8 to an issue in this case should be stricken because it, it
9 should have been supported in order to meet this burden with,
10 with specific evidence, such as a resume or particular facts
11 that show what these words "strong interest in classical
12 music" mean. It's not my job to elicit that from the witness.
13 They, they have failed in the proof of that and that, that
14 clause should be stricken.

15 JUDGE STEINBERG: Ms. Schmeltzer?

16 MS. SCHMELTZER: It's, it's his testimony. We
17 don't have to support this statement with documentary evi-
18 dence. I just don't see any basis for striking it.

19 MR. ZAUNER: I agree with Ms. Schmeltzer. I can't,
20 I can't even imagine what kind of documentary evidence you
21 would have to support the fact that you have an interest in
22 something.

23 JUDGE STEINBERG: The objection is overruled.

24 MR. HONIG: In paragraph 2, the first sentence,
25 "During the period that I worked at the station, it was a

1 | struggle to find anyone to work in a sales position because
2 | the salary structure was low and the FM station was just
3 | initiating a sales effort."

4 | Again, the words "because the salary structure was
5 | low" haven't been buttoned up with, with facts. In, in every-
6 | one's opinion their salary structure is low, but it's put here
7 | as a statement of fact. I wouldn't object to it being admit-
8 | ted with the understanding that it is just the witness's
9 | opinion, but I don't think it's admissible for the truth of
10 | the matter asserted.

11 | MS. SCHMELTZER: Your Honor, we don't have to
12 | support every factual statement with a document, which is what
13 | Mr. Honig is suggested. What -- Mr. Honig is free to cross-
14 | examine the witness on the statements -- on the factual state-
15 | ments that are in here.

16 | MR. ZAUNER: Your Honor, I agree with Mr. Honig on
17 | this one. We would have no objection with the -- with this
18 | coming in, though, with the understanding that this is the
19 | witness's opinion.

20 | MS. SCHMELTZER: We, we do have some documents in
21 | the record --

22 | JUDGE STEINBERG: It's --

23 | MS. SCHMELTZER: -- by the way, on the financial --

24 | JUDGE STEINBERG: It's in the financials --

25 | MS. SCHMELTZER: -- situation. That's right.

1 MR. HONIG: Would that go to the --

2 JUDGE STEINBERG: Well, it'll, it'll -- this is his
3 opinion. Am I right? The, the language that it was your
4 opinion that the salary structure was low.

5 WITNESS: Yes.

6 JUDGE STEINBERG: Is that correct?

7 WITNESS: That is correct.

8 JUDGE STEINBERG: So, the objection is sustained in
9 part, overruled in part. We have the witness's testimony that
10 this is his opinion.

11 MR. HONIG: Then later in that paragraph there is
12 the sentence, "I was not aware of any discrimination on the
13 part of the Church or anyone associated with the stations."

14 I would object because there has been no showing
15 that the witness has any special expertise in being aware of
16 discrimination if he saw it.

17 MS. SCHMELTZER: Well --

18 JUDGE STEINBERG: Ms. Schmeltzer?

19 MS. SCHMELTZER: Yeah. You don't need special
20 expertise to make this statement. It goes to the heart of the
21 case. I think it's important to have the testimony.

22 JUDGE STEINBERG: Mr. Zauner?

23 MR. ZAUNER: I have no objection to that statement
24 coming in.

25 JUDGE STEINBERG: Your objection is overruled. If

1 you want to ask questions going to whether or not he would
2 have been aware, go ahead and do it.

3 MR. HONIG: If you'll give me one moment, Your
4 Honor?

5 (Pause.)

6 MR. HONIG: Turning to page 3, paragraph 7. No.
7 Strike -- strike that. I, I may have a question on it, but I,
8 I, I won't move to strike it at this time. I don't know
9 enough to make that motion yet.

10 Question -- paragraph 8. "While I served as
11 General Manager...I never saw any overt or intentional dis-
12 crimination..." I think this is a somewhat stronger statement
13 than the, the one in paragraph 2 because this relates not only
14 to discrimination but to overt or intentional discrimination.
15 There's no evidence that the witness has the -- knows what
16 anyone else's intent is or what's in their, their head, that,
17 that he -- even if he were an expert that he would have the
18 ability to make such a statement. So, I would, I would move
19 to strike the first sentence of, of paragraph 8.

20 JUDGE STEINBERG: Ms. Schmeltzer?

21 MS. SCHMELTZER: I, I don't see any basis for
22 striking the sentence. It's the witness's testimony. Again,
23 Mr. Honig is free to cross-examine on that.

24 MR. ZAUNER: I can see no basis for striking that
25 testimony.

1 JUDGE STEINBERG: Objection is overruled. Again,
2 you can cross-examine on this if you wish. Does that complete
3 your objection?

4 MR. HONIG: Yes.

5 JUDGE STEINBERG: Mr. Zauner?

6 MR. ZAUNER: We have no questions, Your Honor.

7 JUDGE STEINBERG: No questions or --

8 MR. ZAUNER: Objections.

9 JUDGE STEINBERG: -- objections?

10 MR. ZAUNER: I'm sorry, objections.

11 JUDGE STEINBERG: Okay. Church Exhibit 6 is re-
12 ceived.

13 (Whereupon, the document marked for
14 identification as Church Exhibit
15 No. 6 was received into evidence.)

16 JUDGE STEINBERG: Now, cross-examination? Who's
17 going to go first, the Bureau or Mr. Honig?

18 MR. HONIG: Judge, as you know, I'm at something of
19 a disadvantage trying to cross-examine, and there are only a
20 couple of points that I would want to go into, but I, I would
21 like to ask if I could go out of turn in the hope that maybe
22 the, the difficulty that I have will be moot, because perhaps
23 Mr. Zauner will ask those questions.

24 JUDGE STEINBERG: Do you have any, any problem with
25 that?

1 MR. ZAUNER: Yes, Your Honor. Traditionally the
2 Bureau's role has been to go, go last, and we expect to do
3 that this time. The reason for that rule, I, I -- or that
4 practice is that it's the Bureau's job to make sure that a
5 full and complete record is made and we review as it's going
6 -- as the testimony is going along to make sure that there
7 isn't anything additional that has to be brought out. I would
8 request, Your Honor, that we continue with the usual practice
9 in this case. I can see no reason for not doing so.

10 JUDGE STEINBERG: Okay. Mr. Honig, cross. Let me
11 -- before you start, page 2, paragraph 4, about middle --
12 about middle of the paragraph, the beginning of the line is
13 "concerned at the time..." Do you see that line?

14 WITNESS: Yes.

15 JUDGE STEINBERG: You talk about a "common applica-
16 tion form." You mean job application form, don't you? Can we
17 clarify that as a point of clarification?

18 WITNESS: That is correct.

19 JUDGE STEINBERG: Okay. So, we're talking about a
20 job application form?

21 WITNESS: Correct.

22 JUDGE STEINBERG: I just wanted to -- while that
23 was on my mind I wanted to follow up on that. Now we're back
24 to Mr. Honig.

25 CROSS-EXAMINATION

1 BY MR. HONIG:

2 Q Mr. Lauher, do you have any special expertise in
3 matters relating to discrimination?

4 MS. SCHMELTZER: Objection. We're not proffering
5 Mr. Lauher as an expert witness here.

6 JUDGE STEINBERG: The objection is overruled. He's
7 made statements in here concerning his opinion as to whether
8 or not there was, was discrimination. The -- and I overruled
9 those objections and I told Mr. Honig he could cross and
10 that's what he's doing.

11 MR. ZAUNER: Your Honor, I don't think he made any
12 statements that he -- that there was no discrimination --

13 JUDGE STEINBERG: "I was not aware of any discrimi-
14 nation on the part of the Church or anyone associated with the
15 stations." Paragraph 2.

16 MR. ZAUNER: I see it.

17 JUDGE STEINBERG: Paragraph 8. "...I never saw any
18 overt or intentional discrimination..." Mr. Honig?

19 MR. HONIG: Okay.

20 JUDGE STEINBERG: Restate the question.

21 BY MR. HONIG:

22 Q Do you have any special expertise in matters relat-
23 ing to discrimination?

24 A I didn't go to school for it if that's what you
25 mean by "special."

1 Q Have you ever been to a trade seminar on, on dis-
2 crimination or civil rights or EEO?

3 A Yes.

4 Q When was that?

5 A In the fall of 1988, that would be.

6 Q And who conducted that seminar?

7 A The session was sponsored by the Missouri
8 Broadcasters Association and there was a gentleman who con-
9 ducted a specific EEO seminar by the name of Matt Liebowitz.

10 Q Now, Mr. Liebowitz's seminars deal with how to
11 comply with the affirmative action portions of the EEO rule,
12 don't they?

13 A Well, this seminar was regarding license renewal.

14 Q That's right. And Mr. Liebowitz's seminar, which
15 he, he does this around the country. It's, it's essentially a
16 road show, isn't that right?

17 A I have no idea.

18 MS. SCHMELTZER: Objection, Your Honor. This --

19 JUDGE STEINBERG: Wait. Did we have an answer?

20 WITNESS: I said I had no idea.

21 JUDGE STEINBERG: You -- the answer is he doesn't
22 know. So, the objection is moot.

23 MR. HONIG: Official notice request. Official
24 notice request.

25 JUDGE STEINBERG: I can't take official notice of

1 that.

2 MR. HONIG: All right. We'll have to call Mr.
3 Liebowitz. But let me --

4 JUDGE STEINBERG: Well --

5 MR. HONIG: -- let me ask you this --

6 JUDGE STEINBERG: Well, you can -- if everyone
7 wants to stipulate you can stipulate, but -- okay.

8 MR. HONIG: Okay.

9 JUDGE STEINBERG: If you call Mr. Liebowitz we
10 cross that bridge when we come to it.

11 BY MR. HONIG:

12 Q But this seminar didn't deal with how to ascertain
13 discriminatory intent in others, did it?

14 A I don't recall.

15 Q And it didn't deal with how to make oneself aware
16 of discriminatory behavior in others, did it?

17 MS. SCHMELTZER: Your Honor, those questions are
18 not leading to any kind of evidence that's relevant to the
19 issues in this case.

20 MR. HONIG: It absolutely does, Your Honor.

21 JUDGE STEINBERG: He's testing the, the statements
22 in paragraph 2 and paragraph 8 as to awareness of, of, of
23 discrimination. His questions go to that. So, why don't you
24 read -- I, I lost track of the question. Why don't you re-
25 state it.

1 BY MR. HONIG:

2 Q And Mr. Liebowitz's seminar didn't deal with how to
3 become aware of acts of discrimination performed by others,
4 did it?

5 A I don't recall whether it did or not.

6 Q Now, you understand this -- the difference between
7 the statement "we wanted to hire a minority" and "we wanted to
8 hire minorities"?

9 A I understand what I said.

10 Q Do you understand the difference between those
11 statements in terms of what they communicate?

12 A I understand what I said.

13 MR. HONIG: Judge, the witness --

14 JUDGE STEINBERG: Well --

15 MR. HONIG: -- isn't being responsive.

16 JUDGE STEINBERG: Just -- do you understand the
17 difference between the singular and the plural?

18 WITNESS: Well, yes.

19 JUDGE STEINBERG: Okay.

20 BY MR. HONIG:

21 Q And is the difference between those statements just
22 a difference between the singular and, and, and the plural or
23 is there another difference embedded within those statements?

24 A As I indicated in answer to the question, I believe
25 it was a typo and the change is what I, what I stated.

1 Q Your statement was a typo?
2 A That's what I said.
3 Q Who typed this?
4 A I don't know.
5 Q But you, you wrote it, isn't that right?
6 A Yes.
7 Q Did your draft as you wrote it say "minorities" or
8 "a minority"?
9 A "Minorities."
10 Q Pardon me?
11 A "Minorities."
12 JUDGE STEINBERG: Plural.
13 WITNESS: Plural.
14 MR. HONIG: Your Honor --
15 JUDGE STEINBERG: Please try to keep your voice up.
16 WITNESS: Okay.
17 JUDGE STEINBERG: Do, do we have the draft in the
18 courtroom?
19 MR. HONIG: That's my question.
20 MS. SCHMELTZER: I don't believe so, Your Honor.
21 JUDGE STEINBERG: Does the draft exist?
22 MS. SCHMELTZER: I don't --
23 JUDGE STEINBERG: Well, please make -- if you can
24 find it -- see if you can find it. And if it exists, turn it
25 over to Mr. Honig and the Bureau.

1 BY MR. HONIG:

2 Q Mr. Lauher, I'd like to return to the subject of
3 your meeting with Mr. Blanton at this time. It's correct that
4 you didn't tell Mr. Blanton that you had already signed a
5 declaration for, for KFUD, isn't that right?

6 MR. ZAUNER: Objection. Irrelevant.

7 JUDGE STEINBERG: I'll, I'll allow a little bit on
8 this. Let's see where we're going. Overruled.

9 WITNESS: Restate, please?

10 BY MR. HONIG:

11 Q It's correct that you didn't tell Mr. Blanton that
12 two days before he interviewed you you had already signed this
13 Declaration for KFUD, isn't that correct?

14 A Mr. Blanton didn't ask.

15 Q And you didn't feel that you were under any partic-
16 ular duty to tell him?

17 A Mr. Blanton did not ask.

18 Q I -- is that a yes, you did not so feel?

19 A It didn't appear to be relevant at the time, no.

20 Q Now, whose idea was it to tape record the meeting?

21 A Which meeting.

22 Q Pardon me?

23 A What meeting?

24 Q The meeting with Mr. Blanton.

25 A I produced a small tape recorder and asked if he

1 had any objection to me taping the session. He said no and he
2 said he forgot he was planning on doing that as well.

3 Q Sir, that wasn't my question. My question was
4 whose idea was it to make the, the tape recording? Did some-
5 one suggest to you that it should be done?

6 A Well, I think I answered the question. It was my
7 idea.

8 Q No. Did someone --

9 A I brought the tape recorder and --

10 JUDGE STEINBERG: Okay. It was your idea?

11 WITNESS: Yes.

12 BY MR. HONIG:

13 Q Did anyone at the Church suggest that --

14 A No.

15 Q -- it might be a good idea to --

16 A No.

17 Q Before you met with Mr. Blanton, who did you tell
18 that you were going to have that meeting?

19 A Well, I told my wife. I told somebody at my office
20 so they knew where I would be.

21 Q Did you tell any attorneys?

22 A I believe I -- well, I talked with the attorneys,
23 and I don't recall if that was before or after.

24 JUDGE STEINBERG: Which, which --

25 WITNESS: With, with Kathryn -- about --

1 JUDGE STEINBERG: Kath-- you have to keep your
2 voice up. You told Kathy and Barry?

3 WITNESS: Yes.

4 BY MR. HONIG:

5 Q And did you tell them that you, if it was before,
6 that you were going to make a tape recording or if it was
7 after that you had made a tape recording?

8 MS. SCHMELTZER: Objection, because he said he
9 didn't recall whether he spoke with us before or after.

10 MR. HONIG: I know. So, because he -- he doesn't
11 recall on -- either -- the question is in two parts. If it
12 was before, you -- would, would you have said: I'm going to
13 make a tape recording. Or if it was after did you say: I
14 made a tape recording?

15 MR. ZAUNER: Your Honor, I would like to object on
16 the grounds of relevancy. This has nothing to do with the
17 issues in this proceeding as I understand it.

18 JUDGE STEINBERG: Well --

19 MR. ZAUNER: And this has something to do with a
20 Petition to Enlarge that apparently is going to be filed.

21 MR. HONIG: Your Honor, it has to do with whether
22 I'll be able to cross-examine this witness.

23 JUDGE STEINBERG: You are cross-examining him,
24 right?

25 MR. HONIG: On the other -- no, on the other

1 questions.

2 MR. ZAUNER: On the relevant questions.

3 JUDGE STEINBERG: Well, what -- my feeling about
4 that is you ask the questions or you don't ask the questions.
5 And I -- we, we went through this before. The decision is
6 yours. And if I were you I'd ask the questions, see what the
7 answers are, if the answers are the same or if the answers are
8 different. You do one thing if they're the same; you do
9 another thing if they're different. I mean -- but I think --
10 I, I, I've allowed you a lot of leeway on this because I know
11 it's important to you, but I think you could use your time
12 more productively to get the answers to the questions you
13 really want answered.

14 MR. HONIG: May I ask about three more on this
15 subject?

16 JUDGE STEINBERG: Three. Basically -- and I -- we
17 won't count the one about tape recording. The -- basically,
18 you said you didn't recall whether you spoke to the attorneys
19 before Mr. Blanton spoke with you or after, is that correct?

20 WITNESS: Correct.

21 JUDGE STEINBERG: And the question was did you tell
22 them whether you tape recorded the thing, but that, that won't
23 count as your three.

24 MR. HONIG: First --

25 JUDGE STEINBERG: We didn't get an answer to that,

1 by the way.

2 MR. HONIG: Can you instruct the witness to answer?

3 JUDGE STEINBERG: Well, I don't know that he can
4 answer a question that is basically -- if he doesn't know
5 whether he did something before or after, how can he answer
6 the question as it's been posed to him? It's sort of hypo-
7 thetical.

8 MR. HONIG: At some point, Your Honor --

9 JUDGE STEINBERG: But you didn't answer that. I
10 mean, I, I know what the question is, but you didn't ask that
11 question. And, you know, time is running.

12 MR. HONIG: Since this, since this doesn't count
13 toward the three, I'd like to try it another way.

14 JUDGE STEINBERG: Did, did you ever tell them that
15 you tape recorded the --

16 WITNESS: Yes.

17 JUDGE STEINBERG: -- conversation?

18 WITNESS: Yes.

19 JUDGE STEINBERG: Do you remember when?

20 WITNESS: Sometime after that date.

21 JUDGE STEINBERG: Okay. We got the answer. Now,
22 now you're into your three.

23 MR. HONIG: Who -- before we -- who, who is "them"?

24 JUDGE STEINBERG: Ms. Schmeltzer and Mr. Gottfried,
25 correct?